

1 **UNITED STATES DISTRICT COURT**2 **DISTRICT OF NEVADA**

3 Colony Insurance Company,

Case No.: 2:24-cv-01904-JAD-BNW

4 Plaintiff

5 **Order Dismissing Case under FRCP 4(m)**

v.

6 GVS Construction LLC, et al.,

7 Defendants

8
9 On February 14, 2025, the court notified the plaintiff that this case would be dismissed
10 under Federal Rule of Civil Procedure (FRCP) 4(m) for failure to serve the defendants if prompt
11 action were not taken. That notice advised that “this action may be dismissed without
12 prejudice . . . unless proof of service is filed with the clerk by” March 16, 2025.¹ That deadline
13 passed without notice of service.

14 FRCP 4(m) requires service of the summons and complaint to be completed within 90
15 days of the complaint’s filing, and “[i]f a defendant is not served within 90 days after the
16 complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss
17 the action without prejudice against that defendant or order that service be made within a
18 specified time.”² Rule 4(c)(1) further makes it clear that “[t]he plaintiff is responsible for having
19 the summons and complaint served within the time allowed by Rule 4(m).”³

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22 ¹ ECF No. 5.

23 ² Fed. R. Civ. Proc. 4(m).

³ Fed. R. Civ. Proc. 4(c).

1 District courts have the inherent power to control their dockets and “[i]n the exercise of
 2 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.⁴ A
 3 court may dismiss an action based on a party’s failure to prosecute an action, failure to obey a
 4 court order, or failure to comply with local rules.⁵ In determining whether to dismiss an action
 5 on one of these grounds, the court must consider: (1) the public’s interest in expeditious
 6 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
 7 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
 8 availability of less drastic alternatives.⁶

9 The first two factors, the public’s interest in expeditiously resolving this litigation and the
 10 court’s interest in managing its docket, weigh in favor of dismissal of the plaintiff’s claims. The
 11 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
 12 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
 13 ordered by the court or prosecuting an action.⁷ And the fourth factor—the public policy favoring
 14 disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

15 The fifth factor requires the court to consider whether less drastic alternatives can be used
 16 to correct the party’s failure that brought about the court’s need to consider dismissal.⁸ Courts
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18⁴ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

19⁵ See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply
 20 with an order); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for
 failure to comply with court order).

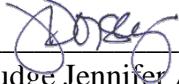
21⁶ *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260–61.

22⁷ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

23⁸ *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less
 drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);
 accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the
 persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of last drastic
 alternatives prior to disobedience of the court’s order as satisfying this element[,]” i.e., like the

1 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must
2 explore possible and meaningful alternatives.”⁹ Because this litigation cannot move forward
3 without service of process, the only alternative is to enter a second order setting another
4 deadline. But issuing a second order will only delay the inevitable and further squander the
5 court’s finite resources. Setting another deadline is not a meaningful alternative given these
6 circumstances. So the fifth factor favors dismissal.

7 Because the plaintiff has not demonstrated that process has been served on the defendants
8 within the time prescribed by FRCP 4(m), **IT IS THEREFORE ORDERED that this case is**
9 **DISMISSED without prejudice** under FRCP 4(m). The Clerk of Court is directed to **CLOSE**
10 **THIS CASE.**

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12 
13 U.S. District Judge Jennifer A. Dorsey
14 March 25, 2025

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23 “initial granting of leave to amend coupled with the warning of dismissal for failure to
comply[,]” have been “eroded” by *Yourish*).

⁹ *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).